

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 26589 of 2006

Dated: 22.12.2006

Between:

K.S. Narayana, E.326866, Conductor, S/o Seetaramaiah,
R/o Peruvancha and Mandal, Khammam District.

..... PETITIONER

AND

The Managing Director, A.P.S.R.T.C., Musheerabad, Hyderabad,
and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 26589 of 2006

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Order:

This writ petition is filed seeking to quash the award passed by respondent No.3-Labour Court, Warangal, in I.D. No. 104 of 2004, dated 10.10.2006, in so far as denying the back wages and continuity of service for all purposes.

The petitioner was appointed as Conductor on daily wages in the respondent-A.P.S.R.T.C., on 24.03.1992, and his services were regularized with effect from 04.08.1995. He was charge sheeted on 30.08.2001 alleging that he unauthorisedly absent from duties from 29.06.2001 to 05.09.2001. The petitioner failed to submit his explanation to the said charges, and also did not attend before the Enquiry Officer, in spite of issuing several notices. Therefore, the Enquiry Officer, having conducted an *ex parte* enquiry, held the charges proved. Based on the findings of the enquiry report, a notice calling upon the petitioner to show cause as to why he shall not be removed from service was issued. The petitioner even did not reply to the said show cause notice. Therefore, the

2nd respondent, namely the Depot Manager, issued the proceedings dated 20.03.2002 imposing the punishment of removal from service. Aggrieved by the same, the petitioner preferred appeal and review petition before the appellate and review authorities, which were rejected on 05.06.2002 and 17.10.2002 respectively. Thereafter, the petitioner raised an industrial dispute in I.D. No. 104 of 2004 and the Labour Court, vide the award impugned in the writ petition, set aside the removal order and directed the respondent-APSRTC to reinstate the petitioner into service as 'fresh conductor' in the present scale of pay, but without continuity of service, back wages and other consequential benefits. Assailing the award of the Labour Court in so far as denying continuity of service, back wages and other consequential benefits, the petitioner filed the present writ petition.

Heard the learned counsel for the petitioner, the learned Standing Counsel for respondent Nos.1 and 2-APSRTC, the learned Government

Pleader for Labour and perused the award of the Labour Court.

The learned counsel for the petitioner submitted that the Labour Court failed to see that the petitioner was absent due to his sickness and that no charge sheet nor show cause notice was served on him and the entire disciplinary proceedings have been initiated behind his back. He further submits that the petitioner has been serving the respondent-Corporation for more than 15 years, and when the Labour Court came to a conclusion that the petitioner is entitled for reinstatement, automatically he is eligible for the back wages as well as the continuity of service and that the award of the Labour Court in so far as denying the back wages and attendant benefits is disproportionate to the proved misconduct. He, thus, prayed to set aside the award passed by the Labour Court in so far as denying the back wages and attendant benefits and allow the writ petition.

On the other hand, learned Standing Counsel for respondent Nos.1 and 2-Corporation contended that the petitioner is habitual absentee, and on similar grounds of absenteeism, the petitioner was earlier censured once, his increment was deferred twice and he was also removed from service once, but there is no change in the attitude of the petitioner. He submits that the petitioner failed to submit his explanation to the charges leveled against him, and also did not attend before the Enquiry Officer, in spite of issuing several notices. He further submitted that the punishment imposed against the petitioner is not disproportionate to the proved misconduct. Given the misconduct, alleged against the petitioner, which stood proved, the petitioner has to be dismissed from service, but the disciplinary authority has imposed a lesser punishment of removal from service, and the Labour Court, on re-appreciation of the entire material on record and holding that the punishment of removal of the petitioner from service is not in proportion to the charges proved, set aside the removal order and directed the respondent-APSRTC to reinstate the petitioner into service as 'fresh conductor', but without continuity of service, back wages and other consequential benefits, and no interference is called for therewith.

The parameters and scope of judicial review of this Court under Article 226 of the Constitution of India to issue a writ of certiorari are limited to – firstly to correct errors of jurisdiction when the inferior Court or Tribunal acts without jurisdiction or in excess or fails to exercise it, secondly correct errors of law apparent on the face of the record, and thirdly correct and interfere with the findings that are based on suspicion, conjectures or surmises or no reason. The law is well settled that this Court does not act as an appellate authority and reappraise the evidence while exercising certiorari jurisdiction. It is within these parameters, the impugned award of the Labour Court, is to be examined.

The petitioner, as can be seen from the award, did not allege any procedural irregularity in the conduct of the enquiry. The petitioner was charge sheeted on 30.08.2001 alleging that he unauthorisedly absented from duties from 29.06.2001 to 05.09.2001. As the charge sheet sent to the petitioner through RPAD was returned undelivered with an endorsement “the addressee is not available – intimated the fact of registered post cover to his family members at the residence – not turned up hence returned”, the same was exhibited on the notice board, but there was no response from the petitioner. Then, a domestic enquiry was ordered, and the notice dated 11.12.2001, sent by the Enquiry Officer, requesting the petitioner to attend for enquiry on any day convenient to him, was also returned undelivered with an endorsement “the petitioner refused to acknowledge the cover”. Since the petitioner neither submitted his explanation to the charge sheet nor attended before the enquiry officer, in spite of issuing several notices, an *ex parte* enquiry was conducted and the Enquiry Officer, on consideration of the entire material on record, held that the charges leveled against the petitioner were proved. The disciplinary authority, considering the nature of the proved charges, imposed punishment of removal from service. The Labour Court, on re-appreciation of the entire material on record, though found that in spite of giving several opportunities, it became a habit for the petitioner to absent to his duties without prior

intimation or sanction of leave, and it definitely amounts to misconduct, but keeping in view the consent given by the respondent-Corporation for reinstatement of the petitioner into service afresh, set aside the removal order and directed the respondent-Corporation to reinstate the petitioner into service as 'fresh conductor', but without continuity of service, back wages and other consequential benefits. Had the Labour Court held that the charges leveled against the petitioner are not proved, then the petitioner would have been justified in contending that he should be awarded backwages and attendant benefits, but that is not the case. The Labour Court, having held that the charges leveled against the petitioner are proved, however, keeping in view the consent given by the respondent-Corporation for reinstatement of the petitioner into service afresh, has taken a lenient view and altered the punishment from that of removal from service to fresh reinstatement. Merely because the petitioner was directed to be reinstated into service by altering the punishment, it does not mean that he is entitled to backwages.

Backwages do not follow as a result of the order of removal or termination being set aside. Grant of backwages is not automatic or mechanical, it depends upon facts and circumstances of each case (see **U.P. State Brassware Corpn.Ltd. v. Uday Narain Pandey¹**). It is not a case where the punishment of removal passed by the disciplinary authority against the petitioner was set aside by the Labour Court on account of any procedural lapses committed by the enquiry officer in the conduct of the enquiry or that the enquiry is fraught with illegalities or that the disciplinary authority or the Labour Court had passed orders in violation of the principles of natural justice. But the Labour Court has altered the order of removal passed by the disciplinary authority to that of reinstatement into service as 'fresh conductor', but without continuity of service, back wages and other consequential benefits on the ground that the respondent-Corporation expressed their consent for reinstatement of the petitioner afresh into service and the punishment imposed was disproportionate to the proved misconduct.

In **Karnataka Bank Ltd. V. A.L. Mohan Rao²**, the apex Court

held that it is not for the courts to interfere in cases of gross misconduct of the nature with the decision of the disciplinary authority so long as the inquiry has been fair and proper and misconduct proved, and that in such matters, it is for the disciplinary authority to decide what is the fit punishment. In that view of the matter, merely because the order of removal passed by the disciplinary authority was altered by the Labour Court to that of reinstatement into service, it does not mean that the petitioner is entitled to be granted backwages, and more so because he remained out of employment during the period between the date of his removal from service and till he was reinstated by virtue of the impugned order.

For the foregoing reasons, there is no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Date: 22.12.2006
NSR/ISL

[1](#) (2006) 1 SCC 479

[2](#) (2006) 1 SCC 63